

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Northern
States Power Company for Certificate
of Need for the Black Dog Generating
Plant Repowering Project

**ORDER GRANTING MOTION
TO WITHDRAW AND
ORDER TO CERTIFY**

On December 7, 2011, Northern States Power Company (NSP) filed a Motion to Withdraw its Application in this matter. The two other active parties in this proceeding, Calpine Corporation (Calpine), and the Minnesota Department of Commerce (Department, DOC) opposed the Motion by NSP.

James R. Denniston, Assistant General Counsel, appeared on behalf of NSP. Julia E. Anderson, Assistant Attorney General, appeared on behalf of the Department. Peter L. Gardon, Esq., Reinhart Boerner Van Deuren, Steven Schleimer, Vice President, Government and Regulatory Affairs, and John Flumerfelt, Director, Government and Regulatory Affairs, appeared on behalf of Calpine.

The final Brief in this matter was received on May 2, 2012. That round of Briefs was requested by the Administrative Law Judge (ALJ), asking Counsel to comment on NSP's March 30 and April 2, 2012, announcement(s) (in separate dockets) that it would be re-considering the previously-approved uprate of its power output at the Prairie Island Nuclear Plant, due to a change of circumstances.

The Prairie Island announcement was based on the same long-range forecasts made by NSP of its required energy needs that caused it to file its Motion to Withdraw its Application.¹

Having taken this matter under advisement, and based on all the proceedings herein, the Administrative Law Judge makes the following:

ORDERS

IT IS ORDERED that NSP's Motion to Withdraw its Application for a Certificate of Need for the Black Dog Generating Plant Repowering Project is **GRANTED**.

¹ May 1, 2012 Memorandum of James R. Denniston.

IT IS ORDERED FURTHER that NSP's Request to Certify its Motion to the Minnesota Public Utilities Commission, pursuant to Minn. R. 1400.7600, is **GRANTED**.

IT IS ORDERED FURTHER that NSP's Withdrawal of its Application for a Certificate of Need in this docket is **CERTIFIED** to the Commission.

Dated: May 30, 2012

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

The Department initially opposed NSP's Motion. In its final Brief, the Department changed its earlier position that the Company should not be allowed to withdraw its Petition. It is noted that a decision in this matter was postponed several months while the Department updated its research/analysis of the forecast of future demand for energy NSP had filed to support the original Motion to Withdraw and Request Certification. No parties opposed the Department's request to complete its analysis before proceeding further.

After that analysis was completed, the Department still opposed NSP's Motion.² Xcel and Calpine replied to the Department's filing on March 23, 2012. After the matter was taken under advisement by the Administrative Law Judge (ALJ), NSP submitted a filing, on March 30 and April 2, 2012, respectively, in Dockets 08-509 (the Prairie Island Uprate Docket), and 10-825 (NSP's 2011-2025 Integrated Resource Planning Docket).

The filing, entitled "Notice of Changed Circumstances and Petition Related to Prairie Island Extended Power Uprate," noted that NSP was placing its Prairie Island nuclear plant uprate project on hold, based on forecasts of future generation needs in the entire system, the costs of alternative resource options and uncertainties in the federal licensing process. NSP asked the Commission to reaffirm that the Prairie Island project remains in the public interest before proceeding further.

Based on NSP's Prairie Island filing, the ALJ requested the parties to comment further on whether NSP should be allowed to withdraw its Petition in this docket. The ALJ asked specifically whether the filing relating to a change in circumstances at Prairie Island was based on different/updated forecast data, or on the same data that supported the December, 2011 Motion to Withdraw in this docket.

² Letter, Anderson to ALJ 3/1/12.

In its latest filing, the Department of Commerce is not opposed actively to a withdrawal of the application in this proceeding. The Department recommends that the Administrative Law Judge obtain updated information from NSP regarding uncertainties bearing on NSP's forecasted demand and assumed supply-side portfolio, related to the Prairie Island uprate, the Monticello uprate, and the status of Sherco 3. The Department notes that those uncertainties bear on the need (or lack of need, as now claimed by NSP) to develop a natural gas generating facility producing 250 MW of baseload capacity at Black Dog.

Calpine has been consistent in its opposition to the Motion to Withdraw and Certification to the Commission. Calpine's filings note that, even when using the lowest (of three) demand forecasts presented by NSP during this Black Dog proceeding, some amount of new combined-cycle capacity may be required as early as 2016. The Department's March 2012 filing had made the same point.

Calpine believes it is appropriate to move forward with this Certificate of Need proceeding and deny NSP's Motion to Withdraw because it is appropriate to decide within the context of this contested case whether NSP's updated forecast information shows that there is no longer a need for the additional Black Dog generation.

The Administrative Law Judge does not agree with Calpine's argument that this Certificate of Need proceeding is mandated by law and necessary to address the need initially identified by NSP. Calpine argues that granting NSP's Motion to Withdraw, because NSP now cannot support the need for the Black Dog project, is inappropriate. The Administrative Law Judge does not agree. Indeed, if updated forecasts led the Company to make a decision that it will not have a need for the additional capacity to be provided by the Black Dog Project in 2016, there is no legal reason to bar the Company from withdrawing its Application.

Calpine argues that this docket is the appropriate forum for conducting discovery, filing testimony, and completing other aspects of a contested case, to test whether NSP's forecasts, as applied to Black Dog, support a withdrawal of the project.

However, the Administrative Law Judge believes that Xcel's reasoning in support of its Motion to Withdraw is sound. The need for future energy capacity that would have been supplied by the Black Dog Project, the uprates at Prairie Island and Monticello, and any circumstances surrounding Sherco 3, are all appropriately under consideration in the Integrated Resource Planning Docket for 2011-2025, currently before the Commission.

As noted in its final Brief, NSP believes that the Commission's decision on its Prairie Island Uprate, and on withdrawal of the Black Dog Certificate of Need Application, may need most appropriately to be considered in a proceeding that can examine the size, type and timing of its next resource addition, and all related issues.

NSP argues, and the ALJ agrees, that referring this matter to the Commission would allow the Commission to provide input and guidance on the best way to move

forward. The Commission could then restructure and clarify goals of the proceeding to better address all factors that may impact this and other generation resource decisions. Those factors include load forecasts, the Company's proposed generation projects currently under review, the costs of other generation options in the marketplace, and alternative competing projects.

All the factors listed in the preceding paragraph make it appropriate to allow withdrawal of the NSP's Application in this proceeding, and to certify the matter to the Commission under Minn. R. 1400.7600.

The legal standard for direct Commission review of a Motion in a matter assigned to an ALJ is stated in the Rule governing Certification of Motions to Agency, Minn. R. 1400.7600, which provides, in relevant part:

...

Any party may request that a pending motion or a motion decided adversely to that party by the judge before or during the course of the hearing...be certified by the judge to the agency. In deciding what motion should be certified, the judge shall consider the following...

B. Whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing...

The Administrative Law Judge is persuaded that Minn. R. 1400.7600 B is applicable here. It is within the purview of the Public Utilities Commission to decide, likely within the context of a docket considering the Company's overall energy needs and forecasts, whether it is appropriate to withdraw the Company's Application for developing 250 MW of additional power at its Black Dog Generating Plant.

R. C. L.